

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 18-0806V

Filed: July 23, 2019

UNPUBLISHED

GORDON ERNST,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Guillain-
Barre Syndrome (GBS)

Joseph Alexander Vuckovich, Maglio Christopher & Toale, PA, Washington, DC, for petitioner.

Althea Walker Davis, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On June 7, 2018, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the “Vaccine Act”). Petitioner alleges that she suffered Guillain-Barre Syndrome (“GBS”) as a result of an influenza (“flu”) vaccination administered on November 23, 2016. Petition at 1-2. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On April 23, 2019, a ruling on entitlement was issued, finding petitioner entitled to compensation for GBS. On July 22, 2019, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$100,000.00. Proffer

¹ The undersigned intends to post this decision on the United States Court of Federal Claims' website. **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access. Because this unpublished decision contains a reasoned explanation for the action in this case, undersigned is required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services).

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

at 1. In the Proffer, respondent represented that petitioner agrees with the proffered award. *Id.* Based on the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **the undersigned awards petitioner a lump sum payment of \$100,000.00 in the form of a check payable to petitioner, Gordon Ernst.** This amount represents compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Nora Beth Dorsey

Nora Beth Dorsey
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS

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|---------------------|---|----------------------|
| GORDON ERNST, |) | |
| |) | |
| Petitioner, |) | No. 18-806V |
| |) | Chief Special Master |
| v. |) | Nora Beth Dorsey |
| |) | SPU |
| SECRETARY OF HEALTH |) | |
| AND HUMAN SERVICES, |) | |
| |) | |
| Respondent. |) | |

RESPONDENT'S PROFFER ON AWARD OF COMPENSATION

On June 7, 2018, Gordon Ernst (“petitioner”) filed a petition for compensation (“Petition”) under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (“Vaccine Act” or “Act”), as amended. Respondent conceded petitioner’s entitlement to compensation in his Rule 4(c) Report filed on April 22, 2019. Based on Respondent’s Rule 4(c) Report, on April 23, 2019, Chief Special Master Dorsey found petitioner entitled to compensation.

I. Items of Compensation

Based upon the evidence of record, respondent proffers that petitioner should be awarded \$100,000.00, which represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

II. Form of the Award

Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment of **\$100,000.00** in the form of a check payable to petitioner.¹

Petitioner agrees.

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

Respectfully submitted,

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Assistant Attorney General

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s/Althea Walker Davis
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DATED: 22 July 2019

¹ Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future pain and suffering, and future lost wages.